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7 Attorneys for Defendant Nortel Networks Corporation

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION  
11

12 TIMES NETWORKS, INC.,

13 Plaintiff,

14 vs.

15 NORTEL NETWORKS CORPORATION,  
16 DOES 1 TO 10, INCLUSIVE.

17 Defendants  
18  
19  
20  
21

Case No.

[BY FAX]

NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. § 1441

(DIVERSITY JURISDICTION)

[Filed concurrently with Declarations of  
Scott J. Ferrell and Gordon Davies In  
Support Thereof and Certification of  
Notice of Interested Parties]

Complaint Filed: November 3, 2005  
Trial Date: None Set

22  
23  
24 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
25 NORTHERN DISTRICT OF CALIFORNIA:

26  
27 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. Section 1441,  
28 defendant Nortel Networks Corporation ("NNC"), hereby removes to the United States

ORIGINAL

1 District Court for the Northern District of California the state court action described  
2 below. This removal is based on diversity grounds pursuant to 28 U.S.C. sections 1332  
3 and 1441.

4  
5 **I. JURISDICTION AND TIMELINESS**

6 1. On November 3, 2005, Plaintiff Times Networks, Inc. ("Times") filed a  
7 lawsuit against NNC in Santa Clara County Superior Court, Case No. 105CV051783.  
8 On or about December 28, 2005, Times effectuated services, however, on Nortel  
9 Networks Incorporated ("NNI"). See Summons, Proof of Service (both stating that  
10 "Nortel Networks, Inc. [was] erroneously sued as Nortel Networks Corporation"), and  
11 Complaint attached as Exhibits "A," "B," and "C" to Declaration of Scott J. Ferrell  
12 ("Ferrell Decl.").

13  
14 2. This Court has original jurisdiction of this action, pursuant to 28 U.S.C.  
15 Sections 1332 and 1441, because: (1) this is a civil action between citizens of different  
16 states, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest  
17 and costs.

18  
19 **A. Factual Background<sup>1</sup>**

20 1. The gravamen of the Complaint is that Times and NNC<sup>2</sup> formed an oral  
21 partnership agreement to jointly take part in bidding a project in China known as the  
22 Northern-Henan Communication Project of the Henan Electricity Power Bureau. As a  
23 result of the partnership, NNC was awarded a contract on the Henan Project and Times  
24 was paid 26% of the contract price in accordance with the agreement between Times  
25 and NNC. Over the course of the next few years, Times and NNC did several other  
26 deals together, each resulting in NNC being awarded a contract and Times being paid a

27  
28 <sup>1</sup> For purposes of this Notice, all substantive allegations are presumed true.

<sup>2</sup> And/or NNI.

percentage of the contract price. In July 2003, Times assisted NNC in bidding for the Central China Grid Company Optical Fiber Transmission Network SDH Communication Equipments Project ("SDH"). In November 2003, NNC provided Times with a "Manufacturer Authorization Letter" authorizing Times to carry out technology and business negotiations during the bidding process for this project, and to sign supply contracts for the sale for the SDH project. Based on NNC's authority, Times focused its resources on the SDH project as the critical component of NNC's presence in China. NNC prepared bidding documents and technical documents, and Times handled the customer relationships with the Central China Grid Company with its expertise and experience in China. NNC was the successful bidder on the SDH contract. However, NNC did not pay Times a percentage of the contract price as it had on previous deals between the parties.

#### **B. Diversity Jurisdiction Is Present**

1. This Court has original jurisdiction of this civil action, pursuant to 28 U.S.C. Sections 1332 and 1441, because it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

2. In this action, complete diversity is present. Although Times alleges "on information and belief" that NNC is a California corporation, the reality is that NNC is a Canadian corporation. Declaration of Gordon Davies ("Davies Decl.") ¶ 2. NNC is a holding company with no employees. Davies Decl., ¶ 3. NNC conducts business in the United States, including California, through subsidiaries such as NNI. Davies Decl., ¶ 5. NNI is incorporated under the laws of Delaware with its principal place of business in Richardson, Texas. Davies Decl., ¶¶ 6, 7.

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1           3. Under Ninth Circuit law, a company's principal place of business is  
2 determined using one of two tests: the "place of operations" test and the "nerve center  
3 test." *Tosco Corp. v. Communities for a Better Environment*, 236 F.3d 495, 500 (9<sup>th</sup>  
4 Cir. 2001). Under either test, Richardson, Texas is NNI's principal place of business.

5  
6           4. The "place of operations" test locates a corporation's principal place of  
7 business in the state that "contains a substantial predominance of corporate operations."  
8 *Id.* "Substantial predominance . . . requires only that the amount of [the] corporation's  
9 activity in one state be significantly larger than any other state in which the corporation  
10 does business." *Tosco*, 236 F.3d at 500. NNI's business activities in Richardson, Texas  
11 "substantially predominate" its business activities compared to any other state. Davies  
12 Decl., ¶ 7.

13  
14           5. Under "the nerve center test," a corporation's principal place of business is  
15 located "in the state where the majority of its executive and administrative functions are  
16 performed." *Tosco*, 236 F.3d at 500. The majority of NNI's executive and  
17 administrative functions are located in Richardson, Texas. Davies Decl., ¶ 7.

18  
19           6. Accordingly, neither NNC nor NNI is a citizen of California. Davies  
20 Decl., ¶ 7. Times, by contrast, is a California Corporation with its principal place of  
21 business in San Francisco, California. Pl.'s Complaint, ¶ 1.

22  
23           7. The "amount in controversy" requirement is also satisfied in this case.  
24 Times alleges that NNC owes it \$700,000 in actual damages and \$1,000,000 in  
25 consequential damages - well in excess of \$75,000. Pl.'s Compl. (Prayer for Relief), ¶¶  
26 1-3. (e.g., Plaintiff prays "[f]or damages in the sum of \$700,000.00 or in an amount  
27 according to proof at trial.").

28 ///

1 **II. PROCESS, PLEADINGS AND ORDERS**

2 1. Other than the Summons and Complaint, no other process, pleadings or  
3 orders have been served on NNC in this action, nor have any further proceedings taken  
4 place.

5  
6 **III. VENUE**

7 1. Defendants are required to remove the underlying state court action to this  
8 Court pursuant to 28 U.S.C. § 1441(a), because the United States District Court for  
9 the Northern District of California (San Jose Division) embraces Santa Clara County  
10 and the suit was originally filed in Santa Clara County, California.

11  
12 **IV. NOTICE**

13 1. Promptly after filing this Notice of Removal, NNC will give written notice  
14 of this pleading to Times and will file a copy of this Notice with the Superior Court  
15 of Santa Clara County, State of California.

16  
17 **V. CONCLUSION**

18 1. For the reasons set forth above, NNC is entitled to remove Times' original  
19 action in the Superior Court of the State of California, Santa Clara County from that  
20 state court to this Court.

21  
22 Dated: January 27, 2006

CALL, JENSEN & FERRELL  
A Professional Corporation

23  
24 By:   
25 Scott J. Ferrell

26 Attorneys for Defendant Nortel Networks  
27 Corporation



**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On January 27, 2006, I served the foregoing document described as **Notice of Removal of Action Pursuant to 28 U.S.C. § 1441 (Diversity Jurisdiction)** on the following person(s) in the manner indicated:

**SEE ATTACHED SERVICE LIST**

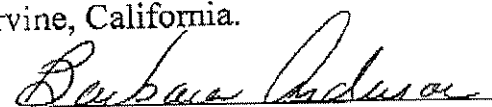
☒ (BY MAIL) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

☐ (BY FEDEX) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by FedEx that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by FedEx with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by FedEx at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

☒ (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal sheet, I transmitted from a facsimile transmission machine, which telephone number is (949) 717-3100, the document described above and a copy of this declaration to the person, and at the facsimile transmission telephone numbers, set forth herein. The above-described transmission was reported as complete and without error by a properly issued transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission.

☐ (FEDERAL) I declare that I am employed in the offices of a member of this Court at whose direction the service was made.

EXECUTED on January 27, 2006, at Irvine, California.

  
Barbara Anderson

**SERVICE LIST**

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**Attorneys for**

**Plaintiff, Times Networks, Inc.**